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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.07.2019

CORAM:

THE HONOURABLE MR.JUSTICE S.MANIKUMAR
and
THE HONOURABLE MR.JUSTICE SUBRAMONIUM PRASAD

W.P.No.34189 of 2017

T.Raghavan

... Petitioner

Vs.

1. The District Collector,
Coimbatore District,
Coimbatore.

2. The Revenue Divisional Officer,
Coimbatore District,
Coimbatore.

3. The Tahsildhar,
Mettupalayam Taluk,
Coimbatore District.

4. The Revenue Inspector,
Karamadai Taluk,
Coimbatore District.

.. Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, issuance of a writ of mandamus, directing the respondents herein not to pass orders granting Patta in Survey No.430/1 in Karamadai Village, Mettupalayam Taluk, Coimbatore District to anyone, as per the A-1 notice issued by the Revenue Inspector, Karamadai, the 4th respondent herein, without conducting proper enquiry on the basis of the objections raised by the petitioner by way of a representation dated 15.11.2017.

For Petitioner : Mr.E.Karthik Raja

For Respondents: Mr.E.Manoharan,
Government Advocate



Inspector, Karamadai in Na.Ka.No.106/2015 dated 14.08.2015, stating that No objection for issuing free housing site patta for the lands in Survey No.430/1, classified as Nathamin Kodadhasanur Village, Karamadai Town Panchayat, be given. This was objected to on the ground that the land is an agricultural land and patta cannot be issued for housing. It is to be mentioned herein that other than the resolution passed by the Town Panchayat, objecting to the issue of patta for S.No.430/1, Ethappan Nagar, Karamadai Town Panchayat, nothing has been brought on record, to substantiate the contention that the area for which enquiry is being conducted for issuance of patta is an 'Agricultural land'.

6. The learned counsel for the petitioner, laid emphasis on G.O.(Ms).No.79, Housing and Urban Development [UD4(3)] Department, dated 04.05.2017, by which the Government in exercise of powers conferred by Sub Section 1 of Section 122 r/w Section 47-A of the Tamil Nadu Town and Country Planning Act, 1971 had framed Tamil Nadu Change of Land Use (From Agriculture to Non-agriculture Purposes in Non-planning Areas) Rules, 2017.

7. As stated earlier in the absence of any documents before us, on issue as to whether the land is an agricultural land or not, we are not expressing any opinion. Be that as it may, the Patta Pass Book Act, 1983 lays down the procedure for issuance of patta. Section 3 of the Patta Pass Book Act, 1983 reads as under.

"Issue of patta pass book.- (1) The Tahsildar shall issue a Patta Pass Book to every owner in respect of land owned by him, on an application made by him in this behalf. Any application received under this section shall be acknowledged by the Tahsildar or any other officer authorised by him in this behalf.

(2) A taluk shall be the unit for the issue of Patta Pass Book. (3) (a) As soon as may be after the publication of the notification under sub-section (3) of section 1 bringing this section into force in an area and before undertaking the work relating to the issue of Patta Pass Book, the Tahsildar shall publish a notice in each village in such area informing the public that Patta Pass Book, is to be issued under this Act to every owner and such owner shall apply for the issue of Patta Pass Book as provided under this section.

(b) The notice shall contain such further particulars and shall be published in such manner, as may be prescribed.

(4) The application under sub-section (1) shall be in such form, shall contain such declaration and particulars, and shall be made in such manner and



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within such time, as may be prescribed.

(5) In cases where no application has been made by any owner within the time-limit referred to in sub-section (4) in respect of any land, the Tahsildar shall, based on the entries made in the records available in his office, cause a notice to be served on the owner of the land concerned requiring him to furnish any information or produce any document for his inspection and also to make representation, if any, in writing for making necessary entries in respect of the land concerned in the Register of Patta Pass Book maintained by him and for the purpose of issuing the Patta Pass Book.

(6) (a) Any owner on whom a notice has been served under sub-section (5) shall be bound to furnish or produce for the inspection of the Tahsildar within such time as may be specified in such notice or within such further time not exceeding thirty days as the Tahsildar may, in his discretion, allow all such information or documents needed for making necessary entries in the Register of Patta Pass Book in respect of the land concerned or for the purpose of issuing the patta pass book, as may be within his knowledge or in his possession or power.

(b) Where any information is furnished or any document is produced in accordance with the notice under sub-section (5) the Tahsildar or any officer authorised by him in his behalf shall be give a written acknowledgement thereof to the person furnishing or producing the same and shall endorse on such document a note under his signature stating the fact of its production and the date thereof.

(7) On receipt of the application under sub-section (1) or on the basis of information obtained by the Tahsildar under clause (b) of sub-section (6), the Tahsildar shall follow such procedure as may be prescribed and shall also give a reasonable opportunity to the persons having interest in the land to make their representations either orally or in writing. After considering the claims of the persons having interest in the land, the Tahsildar shall determine as to whom the Patta Pass Book is to be issued and shall issue a Patta Pass Book accordingly to the owner of the land concerned:

Provided that in the case of any owner who has not made an application under sub-section (1) and in respect of whom a notice has been served under subsection (5), no Patta Pass Book shall be issued by the Tahsildar, unless a declaration in the prescribed form is filed by the owner concerned before the



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Tahsildar.

Provided further that in any case where the Tahsildar is satisfied that any person is not the owner of any land for which a Patta Pass Book is applied for or claimed, he shall for reasons to be recorded in writing reject the application or claim, for the issue of a Patta Pass Book in respect of such land.

(8) The Patta Pass Book shall be in such form as may be prescribed and contain the following particulars, namely:-

(a) the survey number or sub-division number, extent and local name if any, of the land;

(b) the name and address of the owner;

(c) such other particular as may be prescribed.

(9) While issuing a Patta Pass Book under this section the Tahsildar shall show cause all the entries particulars as contained in such patta pass book, to be made in the Register of Patta Pass Book maintained in the office of the Tahsildar for the purpose of the record. The Register of Patta Pass Book shall be in such form and maintained in such manner, as may be prescribed.

(10) The patta pass book shall be issued under this section on payment of such fees as may be prescribed."

8. Rule 3 of the Tamil Nadu Patta Pass Book Rules, 1987 deals with publication of notice for the grant of patta. Rule 4 of the Rules, deals with the procedure on receipt of application or information. Said Rules are extracted hereunder.

3. Publication of notice that the patta pass book is to be issued by the Tahsildar.- (1) The Tahsildar of the area concerned shall publish a notice in Form-I in each village comprised in the said area, within fifteen days from date of publication of the notification under section 1 (3) in the said area, informing the public that a Patta Pass-Book is to be issued under the Act to every owner in respect of land owned by him. The notice shall be published in the District Gazette and by beat of tom-tom in every village. A copy of the said notice shall be displayed in the Notice Board of the Panchayat Office, the village chavadi, if there be one for the village, and also at the offices of the Firka Revenue Inspectors, the Taluk Office and Revenue Divisional Office of the area and Sub-Registrar Offices having jurisdiction over the said area. A copy of the notice shall also be sent to all branches of every credit agency in the area and every



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credit agency in the nearest notified centre.

(2) The application made under section 3 (1) shall be in Form-II and submitted within a period of thirty days from the date specified in the notice under section 3 (3) of the Act. It shall be delivered at the Taluk Office of the area concerned by the applicant and on delivery, the Tahsildar shall issue to the applicant an acknowledgement which specifies the date of receipt of the application.

(3) The application shall be signed by the owner of the land.

4. Procedure on receipt of application or information.- (1) On receipt of the application or information the Tahsildar shall make an entry in the "Register of Application Received" in the order of receipt on Form-III. The Register shall be maintained village-wise.

(2) On the basis of the information furnished in the application and as available in the existing land records or obtained otherwise, the Tahsildar shall cause to be served or despatched, under certificate of posting, to the persons having interest on the land a notice in Form-IV calling upon them to make representation either orally or in writing at a specified place on a specified date which shall be not less than fifteen days and forty days later than the date of receipt of the application or information.

(3) On the prescribed date, the Tahsildar, shall conduct a summary enquiry. At the enquiry, on consideration of age, literacy and occupation, the Tahsildar may permit an authorised agent of the owner to appear on his behalf to supplement whatever the owner has to state orally or in writing. No legal practitioner in his professional capacity shall be allowed to represent any party at such an enquiry. There shall not be adjournment of the enquiry not more than twice and that adjournment shall be granted only on application made by the parties requesting for adjournment. Reasons for granting or refusing the adjournment shall be recorded by the Tahsildar in writing.

(4) In the event of the Tahsildar being satisfied that a dispute concerning ownership of patta is already pending in a Court or issues are raised before him which impinge on personal laws or laws of succession and all the parties interested do not agree on the ownership in writing, he shall direct the concerned parties to obtain a ruling on ownership



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from a competent Civil Court having jurisdiction before changing the entries as already recorded and existing in the various revenue records.

(5) The Tahsildar shall first obtain declaration in Form-V from the owner who has not made any application for Patta Pass-Book and then he shall issue Patta Pass-Book in accordance with the provisions of the Act.

(6) (i) The Tahsildar shall pass an order within fifteen days of completion of such enquiry and the written order shall be communicated to the parties concerned under certificate of posting or served on them in person. A copy of the same shall be sent to the office of the Sub-Registrar in the area.

(ii) The Tahsildar while passing orders shall see that in the cases of land assigned to Scheduled Castes/Scheduled Tribes, under conditional assignment, the conditions under which they are granted are not violated and transfers to non-Scheduled Castes and Scheduled Tribes are not recognised. The Tahsildar shall record in the Register of Patta Pass-Book, Chitta and Patta Pass-Book in red ink, the condition that the land is non-alienable to a person other than Scheduled Caste/Scheduled Tribes, as the case may be.

(iii) When breach of conditions, if any, are noted in the case of lands assigned conditionally, the Tahsildar shall report to Revenue Divisional Officer for further follow up action for the resumption of such land or lands under the provisions in Revenue Standing Order.

(7) The person who acquires by succession, survivorship, inheritance, partition, purchase, or otherwise or by decree or order of a Court or by order of the Government or other authority any right in or over any land as owner shall send a report in writing to the Tahsildar with details of such acquisition of rights. On receipt of such report the Tahsildar shall make an enquiry in accordance with the procedure set out in these rules for the purpose of modification of entries in the Patta Pass-Book already issued or for the purpose of issuing new Patta Pass-Book. Within fifteen days of completion of the said enquiry the Tahsildar shall make arrangement so far issuing orders for modification of entries in the Patta Pass-Book or for effecting sub-divisions if necessary, on collection of sub-division fee of Rs.3 (Rupees three only) by way of court fee labels and to make necessary entries in the Patta Pass-Book or for issue of a new Patta Pass-Book or otherwise, as the



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case may be. The aforesaid order shall be communicated to the parties concerned under certificate of posting or by service in person. A copy of the said order shall be communicated to the office of the Sub- Registrar exercising jurisdiction over the land concerned".

9. A perusal of Section 3 of the Tamil Nadu Patta Pass Book Act, 1983 and Rules 3 and 4 of the Tamil Nadu Patta Pass Book Rules, 1987, prescribe a detailed procedure, which has to be followed before patta is granted. The section postulates an application of mind by the Tahsildhar before patta is issued and stipulates that every person who is interested in the proceeding, is entitled to give a representation, which is to be considered by the Tahsildhar before patta is issued.

10. Once an order granting or refusing to grant patta, is passed by the Thasildar, it can be challenged in an appeal before the authority prescribed under Section 12 of the Act, which is normally the Revenue Divisional Officer. The order of the Revenue Divisional Officer, is further challenged under Section 13 of the Patta Pass Book Act, 1983 in a revision before the District Revenue Officer. Sections 12 and 13 of the Tamil Nadu Patta Pass Book Act, 1983 which provide for appeal and revision are extracted.

12. Appeal--- Any person aggrieved by an order made by the Tahsildar under this Act may, within such period as may be prescribed, appeal to such authority as may be prescribed and the decision of such authority on such appeal shall subject to the provisions of section 13, be final.

13. Revision - Any officer of the Revenue Department not below the rank of District Revenue Officer authorised by the Government, by notification in this behalf for such area as may be specified in the notification, may of his own motion or on the application of a party call for and examine the records of any Tahsildar or appellate authority within his jurisdiction in respect of any proceeding under this Act and pass such orders as he may think fit:

Provided that no such order prejudicial to any person shall be made unless he has been given a reasonable opportunity of making his representation.



11. The Tamil Nadu Patta Pass Book Act, is a complete Code in itself and it lays down the hierarchy of procedure to be followed before patta is granted or refused.

12. The instant writ petition is one for restraining the authorities from performing their statutory duties. An authority cannot be restrained from performing a statutory duty. Writs are not meant for that purpose. On the contrary, it is meant to ensure that the authorities perform their duties and writs are issued only when a statutory authority performs its function, without following the procedure laid down under the statute. A writ lies only when there is a failure to perform the duty, mandated under the statute or the Rules. The writ petition, as framed cannot be granted.

13. Needless to say that it is for the authorities to follow the procedure laid down in the Tamil Nadu Patta Pass Book Act, 1983. The petitioner has already given a representation.

14. Mr.E.Manoharan, learned counsel for the Government submitted that since the instant writ petition is filed, the government have not proceeded with the matter.

15. Writ petition is therefore, disposed of with a direction to the respondents to dispose of the petitioner's representation and pass orders on merits and in accordance with law, within a period of four weeks from the date of receipt of a copy of this order. No Costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1. The District Collector,
Coimbatore District,
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+1cc to the Government Pleader Sr.59765

W.P.No.34189 of 2017

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